

SIEMENS

PATENT
Attorney Docket No. 2002P09019WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	K. Kock)	Group Art Unit:	2617
)		
Serial No.:	10/521,905)	Examiner:	Miah, Liton
)		
Filed:	01/20/2005)	Confirmation No.:	7120
Title:	COMMUNICATIONS SYSTEM FOR AIRPORT SIGNALING DEVICES			

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Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appellant's Reply Brief under 37 CFR 41.41

Sir:

Pursuant to 37 C.F.R. § 41.41, this Reply Brief is responsive to the Examiner's Answer mailed 12 November 2008 in which the Examiner raised new points of argument. This is not a substitute for the Appeal Brief. Any ground for rejection in the Examiner's Answer that is not refuted herein is considered by Appellant to have been sufficiently argued in the Appeal Brief, such that no further comment is needed herein. Arguments herein focus on new arguments and issues identified in the Examiner's answer.

Argument in the Appeal Brief was based on an understanding that the Examiner and the Appellant have had different interpretations of what the Karna reference discloses. Now, in the "Response to Argument" beginning at page 10 of the Examiner's Answer, it appears that the Examiner is also applying an inconsistent and unreasonable interpretation to claim 13 in order to read it on the Karna reference. Specifically, because the rejection relies on disclosure in Karna of using one clock frequency signal (clock pulses at a desired frequency, col. 2, line 40), the

"Response to Argument" appears to be reading claim 13 as though it does not require multiple (i.e., *a number of*) frequency bands. The Karna reference states that

- (i) "the block 2 generating the clock pulses is shown to receive a signal which may be, e.g., line voltage ... [col. 2, lines 46-48];
- (ii) "the frequency of the clock pulses generated ... can be synchronized with the line frequency ... [col. 2, lines 48-50]" and
- (iii) "if the power stage 4 utilizes gate-commutated components, such as GTO thyristors of power transistors, it is also possible to use other clock pulse frequencies ... [col. 2, lines 53-58]"

Thus the reference first suggests an embodiment wherein block 2 generates clock pulses at a single frequency synchronized with the line frequency; and then suggests other embodiments each also generating clock pulses at a single frequency, but which use a clock pulse frequency different from the line frequency, i.e., embodiments which utilize gate commutated components.

Clearly this disclosure of Karna never suggests any single embodiment which uses multiple frequencies. It is hard to imagine any implementation wherein a clock signal would simultaneously have multiple frequencies.

The new argument in the Examiner's Answer does not address these points. Instead, with reference to col. 2, lines 55-56 (see page 8 of the Examiner's Answer) the argument takes out of proper context the statement that for embodiments utilizing gate commutated devices "it also is possible to use other clock pulse frequencies" and wrongly applies this except to incorrectly conclude that Karna suggests Appellant's use of multiple frequency bands for a communication.

It is error to apply such a conclusion outside the context from which it has been plucked in order to read claim 13 thereon. Specifically, this contrived effort must fail because claim 13 can only be read on one embodiment at a time. It is a mistake to argue that, because each of several different embodiments may each utilize a different single frequency, a claim which recites "*using a number of frequency bands*" could be simultaneously read on multiple different embodiments of Karna in order to find a feature which is not present in any single embodiment of Karna. This is not a correct basis for an art rejection.

The rejection as now argued in the Examiner's Answer must misread the following recitation of claim 13 in order to make the rejection. The rejection must re-interpret the following:

wherein the communication between the central communications apparatus and the signaling apparatuses is performed in a frequency range **using a number of frequency bands** within the frequency range

as though the recitation **using a number of frequency bands** means using only a single frequency band. It is impermissible to read out of the claim the very feature "**number of frequency bands**" which the Examiner cannot find in the prior art. **A number of frequency bands is not the same as one frequency band.**

Furthermore, given the manner in which the Examiner now applies the Karna reference, this strained interpretation of claim 13 is inconsistent with attempts to also read the dependent claims on the prior art. For example, while the rejection of claim 13 must read the claim as though it means using only a single frequency band at a time, the rejection of claims 23-25 each require use of OFDM which, as is well known, simultaneously employs multiple frequency bands. Thus, the rejection of claim 13 reads out of the independent claim the requirement for multiple frequency bands in order to contrive a rejection based on Karna, but then reads back into the dependent claim the previously omitted feature (multiple frequency bands) in order to assemble a rejection under Section 103 for several dependent claims. There is no precedent for having it both ways, i.e., reading the independent claim (e.g., claim 13) on one prior art embodiment (e.g., Karna) and then interpreting a claim which depends from that independent claim which is inconsistent with the Examiner's construction of the independent claim. In this case, claim 13 is being read on an embodiment of Karna (in which a single frequency was used for a clock pulse signal); and then claims 23-25 are being inconsistently read on a combination which includes the same embodiment of Karna. This is inconsistent because claims 23-25 require ODFM and ODFM requires multiple frequency bands. As a result, it is not possible to read the Examiner's construction of the generic (independent) claim 13 on the Examiner's construction of dependent claims 22-25. The dependent claims are species of claim 13 and it is therefore improper to present an interpretation of claims 22-25 which is inconsistent with the way claim 13 has been applied in order to reject it.

Application of prior art to reject other dependent claims under Section 103 results in additional inconsistencies. For example, claim 17 (rejected over Karna in view of Ward) requires use of up to ten frequency bands. As noted in the Abstract of Ward, the radio frequency selecting system of Ward relates to a system operable by a pilot for successive use of

frequencies. This is not consistent with what is claimed and does not relate at all to the context of the claimed subject matter. The Examiner's Answer is not at all responsive to the deficiencies, only reiterating prior citations with conclusory remarks such as "Applicant's argument does not account for this citation." In fact, the Examiner does not account for the deficiencies and inconsistencies presented in the Appeal Brief with regard to every claim.

Other arguments in support of the rejections presented in the Examiner's Answer are not refuted herein because they are considered by Appellant to have been sufficiently argued in the Appeal Brief, such that no further comment is needed herein. However, Appellants note that numerous responses in the section "Response to Argument" are only repetitions of the same citations presented in the final rejection, followed by incorrect assertions that Appellant's argument does not account for the citation. In fact, the Examiner has failed to account for the numerous deficiencies and inconsistencies required to contrive the rejections.

Conclusion

In summary, the argument presented in the Examiner's Answer fails to identify the requisite support to sustain any prior art rejection. The arguments in response to the Appeal Brief are without support just as the arguments presented in the final rejection are without basis. In view of the deficiencies identified in the Answer brief, Applicant Appellant again respectfully submits that the rejections are in error. The Board is therefore respectfully requested to reverse the final rejection of the Examiner and to remand the application to the Examiner with instructions to allow all of the pending claims.

Respectfully submitted,

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